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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of)	GC Docket No. 95-172
)	
RAINBOW BROADCASTING COMPANY)	File Nos. BMPCT-910625KP
)	BMPCT-910125KE
For Extension of Time)	BTCCT-911129KT
to Construct)	
)	
and)	
)	
For Assignment of)	
Construction Permit for)	
Station WRBW(TV))	
Orlando, Florida)	
To: The Commission		

RAINBOW BROADCASTING LIMITED

REPLY TO EXCEPTIONS

RENOUF & POLIVY
1532 Sixteenth Street, N.W.
Washington, D.C. 20036
202.265.1807

Counsel for Rainbow
Broadcasting Limited

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SUMMARY

This proceeding is a hearing resulting from a remand of the grant of an extension of time to construct Channel 65, Orlando, Florida, granted to Rainbow Broadcasting Company. Issues were heard relating to alleged *ex parte* contacts, financial misrepresentation, misrepresentation involving the effect of a civil suit regarding Rainbow's tower lease on the permittee's construction and the question whether waiver of Rule 73.3598(a) or grant of an extension of time to construct under Rule 73.3534(b) is justified.

The ALJ resolved all issues favorably to Rainbow. That decision was appealed by the Separate Trial Staff and Press Broadcasting, Inc., an Orlando UHF competitor. With respect to *the ex parte* issue, Rainbow Broadcasting Limited joins in the Reply of Rainbow Broadcasting Company.

Under the other issues, it is shown that the exceptions do not in any way undermine the ALJ's very thorough decision based upon his conclusions under Issue 2, that Rainbow properly reported to the Commission that it was financially qualified and it neither intended to nor did deceive the Commission; under Issue 3 that Rainbow accurately reported the effect of its dispute with the tower

owner because it was initially precluded from going forward with actual construction by the terms of its lease agreement, which required the unforthcoming cooperation of its landlord, and ultimately by a judicially imposed status quo order against the landlord; and under Issue 4 that Rainbow was entitled to waiver of Rule 73.3598(a) based upon the truncated period it was originally given in which to construct and its diligent efforts to construct, and that it satisfied the requirements of Rule 73.3534(b)(3) for extension because it was precluded from constructing during the previous extension periods by circumstances beyond its control and had made all possible efforts to resolve the impediments.

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To: The Honorable Joseph Chachkin
Administrative Law Judge

RAINBOW BROADCASTING LIMITED
REPLY TO EXCEPTIONS

Preliminary Statement

1. This proceeding was designated for hearing pursuant to judicial remand of a Commission ruling granting Rainbow Broadcasting Company (RBC) applications for extension of time to construct and for pro forma assignment of construction permit to Rainbow Broadcasting Limited (RBL), on the following substantive issues and the ultimate public interest issue:

(1) To determine whether Rainbow intentionally violated Sections 1.1208 and 1.1210 of the Commission's *ex parte* rules by soliciting a third party to call the Commission on Rainbow's behalf, and by meeting

the Commission staff to discuss the merits of Rainbow's application proceedings.

(2) To determine whether Rainbow made misrepresentations of fact or was lacking in candor with respect to its financial qualifications regarding its ability to construct and initially operate its station, in violation of Section 1.17 and Section 73.1015 of the Commission's rules or otherwise.

(3) To determine whether Rainbow made misrepresentations of fact or was lacking in candor regarding the nature of the tower litigation in terms of its failure to construct in connection with its fifth and sixth extension applications, in violation of Section 1.17 and Section 73.1015 of the Commission's rules or otherwise.

(4) To determine whether Rainbow has demonstrated that under the circumstances either grant of a waiver of Section 73.3598(a) or grant of an extension under Section 73.3534(b) is justified.

2. The hearing exhaustively explored all four remand issues and in his *Initial Decision* the ALJ concluded that RBC had met its burdens of proceeding and of proof under each of those issues. The Separate Trial Staff (STS) and Press Broadcasting Company, Inc. (Press) strenuously challenge both the facts found and the conclusions drawn by the ALJ on all four issues. However, with the possible exception of Issue 1, which RBL will not address in this Reply,^{1/} they did not proffer at hearing and do not now identify in the record any probative evidence pointing in a direction other than that taken by the ALJ.

^{1/} RBL did not participated in the trial of Issue 1, the *ex parte* issue, because of the involvement of its counsel in the events and as a witness. Here, as below, RBL accordingly adopts the position of RBC on Issue 1.

3. In the following Arguments, RBL responds in order to the exceptions on issues 2-4. While Press also excepts (Argument I, page 3) to the fact that the Commission did not order Rainbow off the air in the *Designation Order*, that contention will not be addressed because it is moot in light of the fact that the relief now grantable to Press is entirely coextensive with the relief it has requested under the substantive issues and is thus contingent upon Rainbow's disqualification.

ARGUMENT

I. THE ALJ CORRECTLY FOUND AND CONCLUDED THAT RBC'S FINANCING AGREEMENT WITH HOWARD CONANT WAS NEVER CONDITIONED NOR WITHDRAWN AND THAT RBC'S CERTIFICATION OF FINANCIAL QUALIFICATION WAS ENTIRELY CANDID AND TRUTHFUL.

4. In a January 1991 FCC Form 307 request for extension of time to construct, RBC checked "yes" in response to question 8: "Are the representations contained in the application for construction permit still true and correct?" Issue 2 sought to determine whether this response was truthful in light of testimony given by RBC general partner Joseph Rey in seeking a preliminary injunction in a lawsuit to enforce a provision in RBC's lease agreement with the Gannett Tower Company giving it exclusive use of its antenna aperture.

5. RBC's financial certification rested upon a \$4 million oral loan agreement entered into in 1984 with Chicago businessman, Howard Conant, (*I.D.*, Finding 41), who had known the RBC principals for over 15 years and had had previous broadcast dealings with Joseph Rey (*I.D.*, Finding 54). Under the issue, "[t]he only question raised by Rey's testimony in the court proceeding is whether or not Conant at some point conditioned his financing of the station on RBC's maintaining its exclusive space on the Gannett tower." (*I.D.*, Conclusion 109).^{2/}

6. RBC entered into its lease in January 1986 (*I.D.*, Finding 62; RBC Exh. 6) to assure the exclusive placement of its antenna on the highest slot of Gannett's Bithlo Tower at 1500 feet. Between 1986 and August 1993, RBC spent some \$500,000 in rent (*I.D.*, Finding 88) in the belief that its right to the 1500' slot was exclusive. Shortly after Supreme Court affirmance of RBC's construction permit grant in August 1990, RBC learned that Gannett was proposing to have RBC share its 1500' slot with Press Television, a UHF competitor. (*I.D.*, Finding 69). To protect its exclusivity, RBC initiated suit against Gannett in November 1990 and sought a preliminary injunction to prevent the tower owner from entering into a

^{2/} By agreement of the parties the relevant time period for this issue is 1991-1993. (*I.D.*, note 6).

lease agreement in contravention of RBC's agreement.

(I.D., Finding 73).^{3/}

7. During the preliminary injunction hearing in the tower suit, Joseph Rey testified regarding the impact of a Press presence in the 1500' slot on RBC's ability to obtain financing. On cross examination^{4/} he was asked:

Q: Now, you also do not have any written loan agreements with anybody to finance your venture--

A: Written, no.

Q: Who is your financier? Who is loaning you the money for this--

A: Rainbow has an agreement with an investor to build and operate the station. It has not been reduced to writing because of this.

* * *

Q: Who is it?

A: By the name of Howard Conant.

Q: Has he actually given you some money and given you a promissory note, for example?

A: I said it has not been reduced to writing because of this. There is an agreement for the financing of the station, and then this hit and everything was put on hold. You asked me that in a deposition. I said that everything had been put on hold because of this.

3/ RBC did not object to Press being on the tower, but only to its occupation of Rainbow's 1500 foot slot. Another slot at 1400 feet was vacant. (Tr. 765).

4/ The ID (Finding 48) attributes this exchange to direct testimony; however, the transcript (Press Exh. 10, pages 6-9) is delineated as "Rey-Cross".

Q: Has this gentleman told you he will no longer lend you the money?

A: It's pending the resolution of this matter.

Q: Has he told you that if your space is not exclusive on the Gannet tower that he won't finance you?

A: He has told me if Channel 18 gets on that tower, the likelihood is that he will not finance the station.

Q: Have you talked to anyone else about loaning you the money?

A: As of late, he is the only person I was talking to.

(*I.D.*, Finding 48).

8. The evidence concerning the loan commitment and its relation to the litigation was complete, consistent and wholly unrefuted on the record, which unequivocally established, as the ALJ found (*I.D.*, Findings 54-59), that Howard Conant's financial commitment at all times remained constant; that its terms were never altered; and that while RBC did not ultimately use the Conant loan, that was only because RBC decided to rely upon equity financing. While Conant never intended to disburse monies without reducing his commitment to writing, his satisfactory past experiences with the principals contented him with an oral commitment, a practice he had followed in the past in comparable situations. (*I.D.*, Finding 54). It was the reduction of the loan to writing and

never the loan itself which was "put on hold" by the litigation. (*I.D.*, Finding 52).

9. On this record, the ALJ concluded that "RBC's representation was entirely truthful"; that "[t]he record conclusively established that the oral loan agreement entered into by RBC to establish its financial qualifications remained intact and was never withdrawn"; and that "the record is singularly lacking in evidence that RBC intended to deceive the Commission in representing that it continued to be financially qualified." (*I.D.*, Conclusion 105). The ALJ concluded that at all times Rainbow had reasonable assurance of the continuing availability of Conant's loan. (*I.D.*, Conclusion 107).

10. STS argues (Argument B) that Joseph Rey's preliminary injunction testimony demonstrates that in January 1991 Joseph Rey "firmly believed that the availability of any financing for the station was contingent on the success of the pending motion in District Court for injunctive relief to keep Press from the top position on the Bithlo Tower." Consequently, argues STS, the failure of RBC to disclose this contingency to its financing made the affirmative response to Question 8 on its January 25, 1991 extension application a misrepresentation or at least a lack of candor.

11. Specifically, STS claims (Brief, page 17) that the ALJ was in error in not concluding that RBC was required to report that "its financing was 'on hold' pending resolution of the tower suit and that RBC was prepared to go forward with construction only if RBC was successful in keeping Press from becoming the fifth station in the market." In STS's view, this failure to report a possible future circumstance constituted fraudulent misrepresentation or lack of candor, notwithstanding the lack of a requirement to report such a circumstance under Section 1.65. *Id.*^{5/}

12. STS's arguments were considered and properly rejected by the ALJ. The *I.D.* found that the proper interpretation of Joseph Rey's testimony in the district court was that the formalizing of the loan agreement in writing was put "on hold" because of the tower suit. (*I.D.*, Conclusion 108). Nothing supports STS's preference for an interpretation that the financing itself was put "on hold".^{6/} In the district court hearing Rey twice

5/ In a footnote (Brief, page 17, note 9), STS also argues somewhat inconsistently that RBC had a Section 1.65 duty to report that its financing had become "conditional" upon being the fifth station in the market.

6/ Similarly, Press argues (pages 14-15) that the ALJ did not address what it perceives to be inconsistencies in RBC's testimony to the district court and the FCC. However, the *I.D.* (Findings 48, 52-53; Conclusion 110) dealt with this argument extensively and neither

testified not that the loan had been put on hold because of the dispute but that it had "not been reduced to writing because of this." (Press Exh 10, pages 6-7). In this proceeding both Conant and Rey testified that Conant's loan commitment was never altered or withdrawn and that in fact when Rey was distressed because of the delay in building the station occasioned by the tower litigation, Conant advised him to wait and see what developed. (I.D., Finding 57; Conclusion 110).

13. That Rey may have had temporary doubts of the viability of the venture in no way undermined RBC's reasonable assurance that Howard Conant would provide the financing if RBC went forward since Conant never deviated from his commitment. It is that reasonable assurance which the Commission requires and RBC affirmed in its response to the Form 307 Question 8 in January 1991. While

Press nor the STS offers any reason for rejecting the ALJ's careful analysis. In short, there was no conflict in RBC's testimony; the nature of the proceedings-- one for a preliminary injunction and the other a licensing proceeding-- required different analysis and different showings and utilized a different standard of proof. Thus, when the district court concluded in the preliminary injunction proceeding that RBC had no financing, it was concerned that no note or legally binding agreement had been entered into. The Commission's reasonable assurance standard, however, requires no written agreement. The ALJ properly concluded (Conclusion 112) that the district court's determination in the tower suit "had no bearing on the factual inquiry here" Neither STS nor Press has excepted to this holding.

a statement from Joseph Rey, at a time when RBC was otherwise free to construct, that the station could not survive might have led him to withhold the money, Rey entertained no such doubts when that time arrived, so the entire basis for STS/Press' contentions is Rey's own wholly irrelevant feelings of pessimism at a time when RBC was unable to construct for reasons beyond its control.

14. As the ALJ noted (*I.D.*, Conclusion 110), it was Rey and never Conant himself who was here the "reluctant suitor." Rey was concerned because Conant was relying on his judgment about the viability of the proposal and at the time of his testimony on the preliminary injunction, Rey was convinced that the station's success might depend on grant of an injunction, a pessimism Conant never shared and which was in any event mooted by changes in the market situation by the time the matter was resolved. (*I.D.*, Findings 50, 52-53, 55-58).

15. STS's remaining arguments on RBC's alleged financial misrepresentation are all pendant to its tortured and properly rejected interpretation of Joseph Rey's district court testimony and thus must fail without regard to their own legal impropriety. Press additionally excepts (pages 18-19) to the ALJ's acceptance of the RBC/Conant loan commitment on the grounds that the parties

did not have an adequate familiarity with each other or a sufficient prior financial relationship to credit their oral loan agreement and that it was "extraordinary" that a \$4 million commitment would be made on a handshake.

16. To support this exception, Press offers neither factual nor legal support, while the ALJ in his *Initial Decision* detailed the prior relationship of the parties and noted that it was intended that the agreement be reduced to writing prior to disbursement of the funds. (*I.D.*, Findings 41, 54; Conclusion 108). It is, however, settled law that a financing commitment need not be in writing. ***Emission de Radio Balmaseda, Inc.***, 8 F.C.C. Rcd. 4335 (1993); ***Northampton Media Associates***, 4 F.C.C. Rcd. 5517, 5518 (1989). And as for the sufficiency of the parties' acquaintance, even if they had not had the long standing business relationship demonstrated in the record, the terms of the loan were settled and mutually understood and RBC provided Conant with more than sufficient documentation to satisfy controlling precedent. ***See, Short Broadcasting Co., Inc.***, 8 F.C.C. Rcd. 5574, 5575-5576 (Rev. Bd. 1993). The ALJ's Findings and Conclusions and the Commission precedent cited therein fully support the resolution of Issue 2 in RBC's favor.

II. THE ALJ CORRECTLY FOUND AND CONCLUDED THAT RBC WAS ENTIRELY CANDID AND TRUTHFUL WHEN IT TOLD THE COMMISSION THAT CONSTRUCTION OF ITS STATION HAD BEEN DELAYED BY ITS LITIGATION WITH THE TOWER OWNER.

17. The ALJ considered the issue of whether RBC misrepresented "regarding the nature of the tower litigation in terms of failure to construct in connection with its fifth and sixth extension applications" as composed of two basic questions: 1) was RBC truthful when it stated in its fifth and sixth extension applications that "[a]ctual construction has been delayed by a dispute with the tower owner"; and 2) did RBC intend to deceive the Commission by making that statement. The ALJ concluded (*I.D.*, Conclusion 113) that "the evidence clearly demonstrates both the truth of RBC's representation and the complete absence of intent to deceive."

18. The ALJ found that RBC's tower lease gave the tower owner the sole authority to construct the transmitter building and that despite RBC's efforts to expedite construction commencing in mid-1990 after the Supreme Court decision upholding RBC's grant, the tower owner did not undertake any construction prior to a district court order of November 27, 1990 precluding it from changing the status quo prior to resolution of RBC's preliminary injunction request. (*I.D.*, Findings 62-63). The record demonstrates and the ALJ found that RBC could

not proceed with construction nor acquire equipment before construction of the building. (*I.D.*, Finding 79).

19. In January 1991, after the district court status quo order had gone into effect, RBC filed its fifth extension application and informed the Commission, *inter alia*, that "actual construction has been delayed by a dispute with the tower owner which is the subject of legal action in the United States District Court for the Southern District of Florida" and that "Rainbow anticipates that its exclusive right to the use of the tower will be recognized by the District Court." (*I.D.*, Finding 27). Because Gannett, the tower owner, wanted to construct a single building to house three transmitters, including those of RBC and Press, the district court's status quo order precluded construction (*I.D.*, Finding 78) and until the status quo order was lifted in June 1991, Gannett neither provided necessary data to RBC nor undertook any construction activities (*I.D.*, Finding 75).^{7/}

^{7/} The record demonstrates that RBC sought the tower owner's assistance in commencing construction even before the Supreme Court's August 30, 1990 decision: In January 1990, RBC sought specific information about the tower and proposed building; on August 10, 1990, RBC wrote to the tower owner complaining of the failure to respond to RBC's January letter; on August 24, 1990, RBC complained to the tower owner that although the transmitter building plans were dated June 12, 1990, they were not provided to RBC until mid-August and RBC again sought

20. The ALJ concluded that RBC's statement in the fifth and sixth extension applications that construction had been delayed by a dispute with the tower owner was entirely accurate (*I.D.*, Finding 79; Conclusions 114-115) and that while RBC undertook construction of the transmitter building and paid for it with the applicant's own funds as soon as Gannett was willing to go forward, RBC was not willing to borrow millions from Howard Conant until its permit was free and clear (*I.D.*, Findings 87-88). After considering all the evidence, the ALJ concluded that RBC's statements to the Commission were truthful and that "[t]his record is marked by the truthfulness of RBC's representations and the complete absence of any intentional deception." (*I.D.*, Conclusion 116). He further concluded that far from reflecting adversely on RBC, the construction delay "raises suspicions about

a response to the January 1990 RBC request for information. (*I.D.*, Findings 66-68). Contrary to Press' assertion (Brief, page 9), the September 17, 1990 letter to Gannett (Press Exh. 7, page 9) does not demonstrate an RBC failure to provide information; it demonstrates the reverse. Moreover, the subsequent correspondence (RBC Exh. 7, pages 10-16) between counsel shows that while the situation between the parties was deteriorating, RBC continued to assert its intention to go forward. It was not until after the preliminary injunction was denied and Gannett was free to conclude its lease with Press that Gannett was willing to go forward. (*I.D.*, Findings 70-75; Conclusions 114-116).

the conduct of Gannett and the possible complicity of Press."^{8/} (I.D., Conclusions 114-115.

21. STS and Press except to the ALJ's resolution of Issue 3 in RBC's favor on the basis of a series of unsupported legal propositions: First, it is argued that because RBC was the plaintiff in the tower suit, any delay engendered by that lawsuit constituted a voluntary action by RBC and cannot therefore be the basis for an extension. From that unprecedented assumption, STS draws the further inference that RBC must therefore have sought to deceive the Commission by not specifically informing the Commission that it was the plaintiff. On that thin reed, STS finds RBC guilty of a disqualifying misrepresentation or lack of candor.

22. STS's Alice in Wonderland logic would be laughable were it not for the dire consequences urged as a result. Rainbow is aware of no precedent, and STS offers none, for the proposition that a permittee may not claim that a construction delay is due to ongoing litigation if it initiated the legal action. Under such a policy, permittees would be without recourse for contract breaches

^{8/} The ALJ suggested (I.D., note 21) that the Commission "may wish to further consider this matter." Rainbow's currently pending Petition to Deny Press' Channel 18 renewal (File No. BRCT-961001ZK) seeks further Commission consideration of Press' improper efforts to utilize the Commission's processes to damage RBC.

relating to tower or equipment contracts. A permittee such as RBC, which had paid half a million dollars (*I.D.*, Finding 88) in antenna site rental to preserve a preferred position, would be required to simply accept a landlord's breach of a rental agreement in order to preserve its construction permit. Similarly, a permittee could not seek recourse against an equipment supplier who failed to deliver paid-for equipment.

23. This is most certainly not a policy the Commission would find equitable or advisable-- even assuming the existence of a permittee with such unlimited funds that it could sustain the consequent costs. The facts of this case itself reveal the folly of such a policy: The fact that Rainbow's suit was a good faith effort to enforce a contract under which it had already extensively performed was reflected in the fact that "[t]he lawsuit with Gannett was eventually settled with Gannett paying RBC a substantial sum of money for RBC giving consent to allow another antenna on the same 1500 foot aperture," (*I.D.*, Note 13). However, because STS's asserted policy takes no account of the validity of a permittee's position, it would have the effect of encouraging just such collusive behavior between an opponent and the site owner as the ALJ suspected might exist here (*I.D.*, Conclusion

114), because the permittee would be powerless to defend its position.

24. In order to attach culpability to RBC under the designated misrepresentation issue, STS's argument goes even beyond positing as existing fact this dangerous policy; it further assumes that RBC was aware of STS's posited "fact" that because RBC was the plaintiff, its lawsuit would not support an extension request and that it therefore concealed this fact from the Commission. This flight of fancy is belied by the record. First, as the ALJ correctly noted, RBC concealed nothing because its statement that "Rainbow anticipates that its exclusive right to the use of the tower aperture will be recognized by the District Court" left no doubt that RBC initiated the lawsuit. (*I.D.*, note 10). Second, the record, including the tower lease agreement (RBC Exh. 6, pages 4-10; Finding 78), demonstrates that RBC's construction efforts were delayed by the tower suit. And, finally, there is no record support for the proposition that RBC had a motive to deceive in view of the fact that RBC (like the Commission itself, see *Rainbow Broadcasting, Inc.*, 11 F.C.C. Rcd. 1167, 1168 (1995)), thought it was entitled as of right to 24 months to construct and

the grant. After a delay of two years, the Video Services Division denied RBC's sixth extension; on July 30, 1993 the Chief, Mass Media Bureau granted reconsideration and reinstated the permit. Because 22 of the 32 months during which RBC held a construction permit after the termination of litigation fell after the expiration of its extension period, actions taken in those months can neither be considered in favor of nor held against RBC. (*I.D.*, Findings 90-91; Conclusions 119-125).

27. During the relevant 10 month period when RBC held an unexpired construction permit the ALJ found and concluded that the record "makes plain" that RBC met the requirements for grant of an extension under Rule 73.3534 (b) (3) because it "had taken all possible steps to proceed with construction," citing the 15 year site lease and payments thereon, pre-construction planning activities and selection of equipment. (*I.D.*, Conclusion 127). This, the ALJ concluded, was all RBC could do because the tower owner would not go forward despite RBC's urgings until it was free to sign a lease with Press. Since ***Deltaville Communications***, 11 F.C.C. Rcd. 10793 (1996), establishes that "the critical legal inquiry under Rule 73.3534 (b) (3) is whether the permittee has taken all possible steps to proceed with construction," the ALJ

concluded that RBC had established its entitlement to an extension. (*I.D.*, Conclusion 127). The ALJ also concluded that since RBC received "far less than the full 24 months to which it was entitled, Commission precedent and equitable considerations compel the conclusion that a grant of the sixth extension request is merited under the hardship provision of Section 73.3534(b) without regard to the extent of RBC's progress during the short period it held a valid construction permit." (*I.D.*, Conclusion 126).

28. STS (pages 19-22) challenges the ALJ's conclusions on the theory that waiver based upon RBC being afforded fewer than 24 months to construct is contrary to the Court's decision in *Press Broadcasting, Inc. v. FCC*, 59 F.3d 1365, 1371-71 (D.C. Cir. 1995); that RBC failed to show itself entitled to waiver under Section 73.3534 (b); that the tower litigation did not prevent RBC from constructing; and that the failure to construct was in any event voluntary since the suit was brought by RBC. Press (pages 11-14) parrots these arguments.

29. The subject of the effects of the tower litigation on RBC's construction efforts has already been dealt with in the context of the tower misrepresentation argument. For present purposes it suffices to add that the

contention that RBC's election to enforce its tower contract at law was a private business judgment and that RBC should be fatally chargeable with any delay engendered is both unsupported by the cases cited and counterproductive as a policy matter.

30. All of the cases cited by STS/Press involved situations in which applicants sought to change their authorized facilities or proposals. Here, by contrast, RBC sought to defend its authorization. The case is thus more properly analogous to *William J. Kitchen*, 7 F.C.C. Rcd. 1469 (1992), in which the tower owner's approval and action were necessary before the applicant could legally begin construction and the applicant acted promptly and diligently to effectuate its proposal. The fact that the tower owner here is not a governmental entity but a non-governmental entity with which RBC had a legally binding contract does not detract from the analogy, especially since the Commission has recognized the legitimacy of private litigation as a basis for extension under appropriate circumstances, see *Contemporary Communications*, 11 F.C.C. Rcd. 5230, 5231 (1996).

31. As a policy matter, STS/Press have again ignored the undesirable public interest consequences of the actions they would have had RBC take. Given the facts as